

ADAM I. GAFNI, Cal. Bar No. 230045
LAW OFFICES OF ADAM I. GAFNI
2811 Wilshire Blvd., Suite 780
Santa Monica, CA 90403
Tel: (424) 744-8344
adam@gafnilaw.com

Attorneys for Plaintiff, VINCENT K. TYLOR

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VINCENT K. TYLOR,

Plaintiff,

v.

SKYLINEAPPS.COM, INC. aka
SKYLINE APPS; BOSCHAL K. LEE
aka BOZ LEE doing business as
SKYLINE APPS and
SKYLINEAPPS.COM, INC.; and
DOES 1 through 10

Defendants.

Case No.: 2:15-cv-2252

**SECONDAMENDED COMPLAINT
FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff Vincent K. Tylor ("Plaintiff"), by and through his attorneys of record, alleges against Skylineapps.com, Inc. aka Skyline Apps Bosch K. Lee Aka Boz Lee Doing Business As Skyline Apps And Skylineapps.Com, Inc ("Defendants") and DOES 1 through 10 as follows:

I.

THE PARTIES

1. Plaintiff Vincent Khoury Tylor ("Plaintiff") is a resident of the State of

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3 Hawaii and is a renowned professional photographer specializing in Hawaiian
4 landscapes. Plaintiff operates the website www.hawaiianphotos.net and regularly
5 sells his copyrighted images across the United States, including in Hawaii and
6 California. Plaintiff's photographs are copyrighted images and Plaintiff works
7 vigorously, through sending DMCA notices as well as cease-and-desist letters to
8 protect his copyrighted images from unauthorized use.

9 2. Plaintiff is informed and believes that Defendant Skylineapps.com, Inc. aka
10 Skyline Apps is an organization whose business type is unknown with its principal
11 place of business located at 633 W. 5th Street, 28th floor, Los Angeles, CA 90071.

12 3. Plaintiff is informed and believes that Defendant Bosch K. Lee aka Boz
13 Lee is the owner and/or manager and/or principal of Skylineapps.com, Inc.

14 4. Plaintiff is informed and believe that Defendant Skylineapps.com, Inc. and
15 Bosch K. Lee both do business as Skyline Apps and Skylineapps.com, Inc. and
16 acted in concert and/or aided and abetted each other to commit the wrongful acts
17 alleged herein. Collectively, Defendants Skylineapps.com, Inc. and Bosch K. Lee
18 shall be referred to as "Defendants" or "Skyline Apps."

19 5. Plaintiff is informed and believes that Defendants provide and distribute
20 technology services to businesses and individuals, including but not limited to
21 providing web and mobile applications ("Apps") services.

22 6. Plaintiff is further informed and believes that Defendants also design and
23 develop their own Apps, which they distribute and make publicly available for
24 download on numerous websites, through direct email to customers, in stores, and
25 through other means, including directly into California.

26 7. Plaintiff is informed and believes that Defendants own, operate, manage,
27 supervise, and/or control commercial marketing websites at, *inter alia*,
28 www.skylineapps.com (and sub-Uniform Resource Locators (sub-URLs)),

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3 www.facebook.com/skylineapps (and sub-URLs) and www.vegascrush.com (and
4 sub-URLs) (hereinafter collectively the “Websites”).

5 8. Plaintiff is informed and believes that Defendants use the Websites to
6 promote their services, market and/or sell their Apps, distribute their Apps by
7 making them available for download, and generate business.

8 9. Plaintiff is further informed and believes that Defendants also use other
9 third-party vendors, including, *inter alia*, third-party vendor websites to promote
10 their services and generate business by offering their Apps for download via these
11 third party vendor websites, including but not limited to on www.play.google.com
12 (and related sub-URLs), www.pulsarwallpapers.com (and related sub-URLs),
13 www.app-biz.com (and sub-URLs) (hereinafter collectively the “Third Party
14 Websites.”)

15 10. Plaintiff does not presently know the true names and capacities of the
16 defendants named as Does 1 through 10 and therefore sues such defendants by
17 these fictitious names. Plaintiff believes that the Doe Defendants are persons or
18 entities who are involved in the acts set forth below, either as agents, employees, or
19 other representatives of the known defendants, or through entering into a
20 conspiracy and agreement with the known Defendants to perform these acts for
21 financial gain and profit, in violation of Plaintiff’s rights. Plaintiff is informed and
22 believes that Does 1 through 10 include but are not limited to other third parties not
23 yet identified who have unlawfully uploaded or downloaded, reproduced,
24 published, displayed, and/or distributed the copyrighted images at issue after
25 obtaining them from the Defendant via, *inter alia*, the Websites, the Third Party
26 Websites, and/or via email (hereinafter “Third Party Direct Infringers”). Plaintiff
27 will request leave of Court to amend this Complaint to set forth the Doe Defendants
28 true names, identities and capacities when Plaintiff ascertains them. The Doe

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3 Defendants and the known Defendants are referred to hereinafter collectively as
4 “Defendants.”

5 11. Plaintiff is informed and believes that Defendants have been or are the
6 principals, officers, directors, agents, employees, representatives, and/or co-
7 conspirators of each of the other Defendants, and in such capacity or capacities
8 participated in the acts or conduct alleged herein and incurred liability therefore.
9 Plaintiff is informed and believes that at some unknown time the Defendants or
10 some of them entered into a conspiracy with other of the Defendants to commit the
11 wrongful acts described herein; the actions described below were taken in
12 furtherance of such conspiracy; and Defendants aided and abetted each other in the
13 wrongful acts alleged herein. Plaintiff is informed and believes that each of the
14 Defendants acted for personal gain or in furtherance of their own financial
15 advantage in doing the acts alleged below.

16 II.

17 JURISDICTION AND VENUE

18 12. This action is for damages and preliminary and permanent injunctive relief
19 arising from Defendants’ copyright infringements in violation of the United States
20 Copyright Act, 17 U.S.C §§ 101 et. seq.

21 13. ***Subject Matter Jurisdiction.*** This Court has jurisdiction over the subject
22 matter of this action under 28 U.S.C. § 1331(federal question) and 28 U.S.C §
23 1338(a) (copyright) because this matter is brought under 17 U.S.C § 101 et seq.
24 (federal copyright law).

25 14. ***Personal Jurisdiction.*** Plaintiff is informed and believes that personal
26 jurisdiction is proper over Defendants because Defendant Skylineapps.com, Inc.
27 has for years and continuing to the date of this Complaint resided in and/or operated
28 a commercial business headquartered within this judicial district.

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3 15. On further information and belief, personal jurisdiction is proper within this
4 judicial district because Defendants together systematically and continuously
5 transacts business, including providing headquarters, call center services, business
6 development services, and entering into contracts on an ongoing basis with and
7 provide services to individuals and/or companies in California, as well as
8 employing California residents and key executives to work in California.

9 16. On information and belief, Defendants enter into substantial and ongoing
10 contracts with advertising and marketing companies some of which are located
11 within the State of California (such as Google, Inc., Amazon.com, Inc., and eBay,
12 Inc.) with knowledge and purpose that such advertisements and marketing of their
13 services be directed to, received by, and target persons within the State of
14 California.

15 17. On information and belief, Defendants operate their Apps services together
16 and together created the Apps at issue in this case that infringed on Plaintiff's rights
17 and together own, operate, and control the distribution of those Apps and infringing
18 products to California residents via *inter alia*, the Websites, Third Party Websites,
19 and via direct email to customers, targeting such California consumers.

20 18. Upon further information and belief Defendants expressly provide under
21 their terms-of-use as posted on the website www.skylineapps.com, which they
22 jointly own, operate and/or control the following language consenting to California
23 choice of law and jurisdiction and encouraging disputes arising out of their services,
24 website, and/or Apps be brought in California:

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26 **Website and Mobile Apps Terms of Use**

27 These Terms of Use govern your access to and use of Skyline Technologies,
28 Inc.'s Skyline Apps Mobile App Maker platform (the "Site"), any information,
text, graphics, or other materials appearing on the Site (the "Content"), and any

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3 services provided through the Site (the "Services"). Your access to and use of
4 the Site, Content, and/or Services are expressly conditioned on your compliance
5 with these Terms of Use. By accessing or using the Site, Content, or Services,
6 you agree to be bound by these Terms of Use...

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8 **[Skyline Technologies, Inc. Property**

9 All right, title, and interest in and to the Site, Content, and Services are and will
10 remain the exclusive property of Skyline Technologies, Inc...]

11 **Subscription Terms of Use**

12 The following terms apply to the fee-based version of this web service. This
13 Web Service (the "Service") requires payment of a subscription fee for extended
14 use. The copyright owner and licensor of the web services that you access
15 though this site is Skyline Apps., a California Corporation with principal
16 business offices located 633 W 5th St 28 floor, Los Angeles, CA 90071
17 ("Skyline Apps"). This Web Service Subscription Agreement License is a
18 binding legal agreement between the individual or the corporation accessing the
19 service ("You") and Skyline Apps...

20 **Controlling Law and Jurisdiction**

21 These Terms of Use and any action related thereto will be governed by the laws
22 of the State of California without regard to its conflict of law provisions. The
23 exclusive jurisdiction and venue of any action with respect to the subject matter
24 of these Terms of Use will be the state and federal courts located in San
25 Francisco County, California, and each of the parties hereto waives any
26 objection to jurisdiction and venue in such courts...

27 (See http://skylineapps.com/Terms_of_Use.pdf.)

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19. Plaintiff is further informed and believes that the copyright infringements
by Defendants giving rise to this lawsuit occurred, *inter alia*, within this Judicial
District (including willful infringements that resulted in downloads/distributions
within California) and Defendants have otherwise had sufficient contacts within the
State of California such that exercising personal jurisdiction over Defendants is
proper and would not offend traditional notions of fair play and substantial justice.

20. **Venue.** Venue properly lies within this district, pursuant to the provision of 28 U.S.C. § 1391(b) and (c) and 1400(a) in that Defendants reside and/or are headquartered in this judicial district and a substantial part of the events giving rise to the claims occurred in this District, including having engaged in the act of copyright infringement within this district.

III.

FACTUAL ALLEGATIONS

21. Plaintiff incorporates by reference each allegation contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

22. Plaintiff created the seven (7) photographs at issue in this case, which are duly registered with the United States Copyright Office in Plaintiff's name as follows:

Description/Name	Registration Numbers
K-08 Kee Beach Web-LG.jpg	Original Registration VA 1-696-555, described in supplemental form VA 1-432-741
A-14 Tropical Lagoon Web-LG.jpg	Original Registration VA 1-696-555, described in supplemental form VA 1-432-741
K-06-B Wailua Falls Rainbow Web-LG.jpg	Original Registration VA 1-696-555, described in supplemental form VA 1-432-741
O-05 Chinamans Hat Web-LG.jpg	Original Registration VA 1-696-555, described in supplemental form VA 1-432-741

K-12 Lumahai Beach LowWeb-LG.jpg	Original Registration VA-1-696-552, described in supplemental form VA 1- 432-820
A-17 NaPali Sunset wide Web-LG	Original Registration VA 1-696-555, described in supplemental form VA 1- 432-741
O-01 Waikiki-Pink Boat ORIGINAL VERSION.jpg	Original Registration VA 1-759-562

23. Hereinafter, the seven (7) photographs identified in the preceding paragraph shall be referred to collectively as the “Photographs.”

24. Plaintiff is informed and believes that the Photographs were registered prior to the infringements alleged herein occurring.

25. The Photographs are original works to which Plaintiff, as the sole copyright owner, holds the exclusive rights to reproduce, publicly distribute, and publicly display, pursuant to 17 U.S.C § 106 and 501.

26. The Photographs were not “works for hire.” Plaintiff has incurred substantial time and expense in creating the Photographs.

27. With the last three years, Plaintiff discovered that Defendants without a license or Plaintiff’s consent unlawfully reproduced or caused to be reproduced the Photographs and created Apps usings the Photographs, which they copied to include in Apps and/or uploaded, publicly displayed and distributed to a global audience on the World Wide Web where they offered the Apps displaying the Photographs for download via, *inter alia*, some or all of the Websites and Third Party Websites, and through direct e-mail to their customers who could then

download the Apps to their smartphones or tablets.

28. Plaintiff is informed and believed that the Defendants had knowledge that they were engaging in infringing activity and/or acted in conscious disregard of or recklessly as to whether they were infringing. Plaintiff is informed and believes that Defendants have attempted to use a variety of false or fraudulent means to obscure their participation and liability herein.

29. Within the last three years, Plaintiff discovered that Defendants also unlawfully reproduced or caused to be reproduced, uploaded/downloaded or caused to be uploaded/downloaded, publicly displayed and distributed or caused to be publicly displayed and distributed the Photographs without a license or Plaintiff's consent by taking snapshots of its Apps displaying the Photographs and then uploading the snapshots containing the Photographs onto the Websites and Third party Websites as a way of marketing its Apps and services. Plaintiff is informed and believes that Defendants have publicly displayed and distributed the Photographs on at least the following URLs/links:

- <http://apps-biz.com/mobile-app-of-kauai-hawaii/>
- <http://apps-biz.com/tag/hawaii-travel-apps/>
- <http://apps-biz.com/tag/travel-apps/>
- <http://apps-biz.com/tag/app/>
- <http://apps-biz.com/tag/smartphone/>
- <http://apps-biz.com/tag/iphone-apps/>
- <http://apps-biz.com/tag/mobile-apps/>
- <http://apps-biz.com/wp-content/uploads/2011/06/k2.jpg>
- <http://apps-biz.com/wp-content/uploads/2011/06/k11.jpg>
- http://www.pulsarwallpapers.com/data/media/921/Kee_Beach_Kauai_Hawaii.jpg
- <http://vegacrush.com/skyline/img/sunset.jpeg>
- <http://vegacrush.com/skyline/img/kauai.jpg>
- <https://www.facebook.com/skylineapps>
- <https://www.facebook.com/skylineapps/photos>

- <https://www.facebook.com/photo.php?fbid=208662269173222&set=a.208661905839925.49642.100000883508423&type=1&theater>
- <https://www.facebook.com/photo.php?fbid=208662269173222&set=yo.100000883508423.2011&type=1&theater>
- <https://play.google.com/store/apps/details?id=com.phonegap.oahuhawaii&hl=en>
- <https://play.google.com/store/apps/details?id=com.phonegap.kauaihawaii&hl=en>

30. Plaintiff is informed and believes that Defendants' conduct of copying the photographs, creating apps, publicly distributing the apps and the photographs constitutes direct copyright infringement, in violation of Sections 106 and 501 of the Copyright Act (17 U.S.C. §§ 106 and 501).

31. Plaintiff is further informed and believes that Third Party Direct Infringers unlawfully copied/reproduced the photographs by downloading the Apps containing the Photographs after obtaining them from Defendants via, *inter alia*, the Websites, Third Party Websites, and direct email. Plaintiff is informed and believes that such conduct constitutes direct copyright infringement by these Third Party Direct Infringers.

32. Plaintiff is informed and believes that Defendants materially contributed to and/or induced the direct infringement by the Third Party Direct Infringers by distributing its Apps for postings or download on the Websites, Third Party Websites, and/or via emails to customers and that Defendants acted with knowledge that neither they nor these Third Party Direct Infringers had a right to copy or download the Photographs, constituting contributory copyright infringement, pursuant to section 101 et seq. of the United States Copyright Act.

33. Plaintiff is further informed and believes that Defendants had the right and ability to supervise and/or control the infringing conduct and have derived a direct financial benefit from the infringing use of the Photographs by, *inter alia*, charging

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3 clients to download the Apps containing the Photographs and/or using the Apps
4 containing the Photographs as a draw to customers to purchase other Apps and/or
5 services and also using the Photographs on its commercial websites and other third
6 party commercial websites to market, advertise, and promote its services and
7 generate business, constituting vicarious copyright infringement, pursuant to
8 section 101 et seq. of the United States Copyright Act.

9 34. Plaintiff is further informed and believes that Defendants unlawfully
10 reproduced or caused to be reproduced, uploaded/downloaded or caused to be
11 uploaded/downloaded, publicly displayed and distributed or caused to be publicly
12 displayed and distributed the Photographs after receiving constructive and/or actual
13 knowledge through, *inter alia*, cease and desist letters that they received from
14 Plaintiff explaining that Defendants did not have a license or consent to use the
15 copyrighted Photographs in the manner in which they were used. Plaintiff is
16 informed and believes that even with this knowledge up and until the date of the
17 filing of the Complaint, Defendants continue to unlawfully infringe on Plaintiff's
18 rights.

19 35. Plaintiff is informed and believes that Defendants by their use of the
20 Photographs with knowledge of or reckless disregard for the fact that they did not
21 and do not have a license or consent to use the copyrighted photographs are
22 willfully violating Plaintiff's exclusive rights as the copyright owner to reproduce,
23 adapt, display, distribute, and/or create derivative works under 17 U.S.C. § 106 and
24 § 501.

25 36. Defendants' unauthorized copying/reproducing, uploading/downloading,
26 public display, and distribution as alleged herein has caused Plaintiff damages.

27 37. Defendants have shown that they intend to continue, unless restrained, to
28 use Plaintiff's copyrighted photographic works, willfully infringing, and causing

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3 irreparable damages to Plaintiff for which he has no adequate remedy of law.

4 38. Defendants' unlawful use of copies of Plaintiff's original photographic
5 works have diminished the value of the original photographic works by distributing
6 and encouraging redistribution of the photographic works without identifying the
7 photographic works as being the exclusive property of Plaintiff.

8 39. Defendants' unlawful acts have been and are interfering with and
9 undermining Plaintiff's ability to market Plaintiff's own original photographic
10 works, thereby impairing the value and prejudicing the sale or license by Plaintiff
11 of his own photographic works.

12 40. Plaintiff is entitled to a preliminary and permanent injunction restraining
13 Defendants from engaging in further acts of copyright infringement and causing
14 irreparable damage to Plaintiff for which he has no adequate remedy of law.
15 Defendants, by their unauthorized appropriation and use of Plaintiff's original
16 photographic works, have been and are engaging in acts of unfair competition,
17 unlawful appropriation, unjust enrichment, wrongful deception of the purchasing
18 public, and unlawful trading on Plaintiff's goodwill and the public acceptance of
19 Plaintiff's original photographic works.

20 41. Because Defendants used Plaintiff's copyrighted photographic works
21 without licenses, infringing the exclusive rights of Plaintiff as the copyright owner,
22 Plaintiff is entitled to have the infringing publication and any improperly acquired
23 likenesses or images (however stored or recorded) impounded while this action is
24 pending.

IV.

FIRST CLAIM FOR RELIEF
DIRECT COPYRIGHT INFRINGEMENT

17 U.S.C. §§ 106 and 501

42. Plaintiff incorporates by reference each allegation contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

43. By the actions alleged above, Defendants have infringed on Plaintiff's copyrights by copying, displaying, publishing, and distributing Plaintiff's copyrighted Photographs without permission to a global audience on the World Wide Web.

44. Plaintiff is informed and believes that Defendants' acts of infringement were ongoing, willful, intentional, and purposeful, and/or in reckless disregard of and with indifference to Plaintiff's rights in that Defendants knew or recklessly failed to know that they did not have the right to use the Photographs in the manner in which they used the Photographs.

45. Plaintiff is informed and believes that, by the actions alleged above, Defendants violated Plaintiff's exclusive rights as the copyright owner to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. §§ 101 et. seq. making Defendants liable for willful direct copyright infringement.

46. As a direct and proximate result of Defendants' infringement, Plaintiff was damaged and is entitled to recover from Defendants the damages, including attorney's fees, he has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of its acts of infringement alleged above. At present, the amount of damages, gains, profits and advantages cannot be fully ascertained by Plaintiff, but will be established according to proof at trial. Plaintiff also seeks to recover statutory damages for Defendants' infringement of

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3 his copyrights of up to \$150,000.00 per infringement.

4 47. Plaintiff is entitled to a preliminary and permanent injunction restraining
5 Defendants from engaging in further acts of copyright infringement and causing
6 irreparable damage to Plaintiff for which he has no adequate remedy of law.

7 **V.**

8 **SECOND CLAIM FOR RELIEF**
9 **SECONDARY COPYRIGHT INFRINGEMENT**
10 (Contributory, Inducement, and Vicarious)
11 17 U.S.C. §§ 106 and 501

12 48. Plaintiff incorporates by reference each allegation contained in the
13 foregoing paragraphs of this Complaint as if fully set forth herein.

14 49. By the actions alleged above, Defendants had either constructive knowledge
15 or actual knowledge and/or had reason to know of the infringing activity alleged
16 herein and that Defendants had no right to copy, upload, display, distribute or
17 download the Photographs and consciously disregarded such knowledge. Notice
18 was sent to Defendants of the infringements by U.S. mail to the address listed as the
19 company address on its website as well as by email to the email addresses
20 info@skylineapps.com, boz@skylineapps.com, and cbcinsider@yahoo.com (the
21 registered email addresses according to a whois search of the websites). The
22 physical address was one Lee has used and the letters were not returned. The email
23 addresses are ones that Lee has used or asserted to use. The emails were not
24 returned.

25 50. Plaintiff is informed and believes that Defendants continued to infringe on
26 Plaintiff's copyrights by continuing to copy, publicly display and distribute the
27 Photographs even after receiving constructive and/or actual knowledge of the
28 infringing activity. Before filing suit, Plaintiff sent Defendants cease and desist
29 notices of the infringements on July 30, 2014; August 15, 2014; and December 10,

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3 2014. Despite such notices, at least eight (8) of the infringing links identified in the
4 letters (and in this Complaint, above) remained live and active on the internet as of
5 December 8, 2014 and at least four (4) remained active after all three letters were
6 sent.

7 51. Plaintiff is informed and believes that by the actions alleged above,
8 Defendants knowingly encouraged, assisted, enabled, induced, facilitated, caused,
9 and/or materially contributed to each act of infringement by the Third Party Direct
10 Infringers who but for Defendants acts of copying, uploading, displaying and
11 distributing the Photographs on, *inter alia*, their Apps, Website, the Third Party
12 Websites, and through direct email would never have obtained the Photographs and
13 further copied, displayed, publicized, and/or distributed, the Photographs without
14 Plaintiff's permission. Such belief is based upon, *inter alia*, Defendants' never
15 obtaining a license for the use of any of Plaintiff's Photographs used on
16 Defendants' websites. Moreover, Plaintiff is informed and believes on the basis of
17 the whois records showing Defendants' ownership and/or management of their
18 websites that Defendants had the ability to prevent the infringements from
19 occurring by, *inter alia*, procuring licenses for the use of the Photographs. The
20 images appeared on websites and "Apps" provided by Defendants.

21 52. Defendants' conduct constitutes contributory (and inducement) copyright
22 infringement of Plaintiff's exclusive rights in the Photographs in violation of 17
23 U.S.C. § 106 and 501.

24 53. Plaintiff is further informed and believes that Defendants, had the right and
25 ability to control and/or supervise and did direct and supervise the infringing
26 conduct alleged herein and those of the Third Party Direct Infringers, including but
27 not limited to, by giving these Third Party Direct Infringers actual and/or implied
28 consent to download the Apps containing the Photographs thus giving them actual

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3 and/or implied consent to unlawfully reproduce the Photographs in the Apps.
4 Plaintiff's belief that Defendant Lee is likely in control of the relevant websites and
5 Apps is based on, inter alia, the facts that Defendant Lee asserted under penalty of
6 perjury to the USPTO that he was using in commerce the Skyline Apps trademarks,
7 asserting having used it himself in commerce; and appeared as owner of the subject
8 websites according to a whois domain search performed for the websites, and for
9 one website had the same contact information. Defendant Lee also appears to be the
10 owner/recipient of the email address info@skylineapps.com as well as maintains
11 the email address boz@skylineapps.com (from which he has communicated to
12 Plaintiff's counsel). The email address info@skylineapps.com has been found to be
13 tied to the address and phone number Defendant Lee uses on his pleadings. Further,
14 Defendant Lee is listed as the Director of Skyline Apps in numerous locations,
15 including his own LinkedIn profile, again with accompanying phone numbers and
16 email addresses identical to those Defendant Lee has been using throughout this
17 matter. The address listed on the Skyline Apps website is the same address as other
18 businesses attributed to Defendant Lee. Moreover, Defendant Lee has stated in
19 online profiles that he is "an entrepreneur who is selling mobile app maker, ebook
20 maker and aims to create a market place my software." This is a near match for the
21 description of the Skyline Apps product, which is an eBook and Moible App
22 Maker. Also, all the infringing sites have a common internet protocol address which
23 is associated with Boz Lee along with other websites which he is associated with
24 indicating that he owns/leases and thereby controls the operative servers where
25 infringing images were stored.

26 54. Plaintiff is informed and believes that Defendants obtained a direct financial
27 benefit from the direct infringements by these Third Party Direct Infringers who
28 either paid for these Apps and/or who used Defendants services after receiving and

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3 downloading the Apps as part of Defendants marketing efforts. The use of
4 Plaintiff's copyrighted photographs was used on Defendants' commercial websites
5 wherein they sell the Skyline Apps product. The photographs at issue appear
6 alongside a Hawaii travel apps. The Skyline Apps product was/is sold "at over
7 2,000 Office Max and Office Depot Stores," as stated on its website. The
8 Photographs, as posted, accompany descriptions of the mobile apps for sale with
9 corresponding links to download the apps. On infringing sites where the works
10 were found, there are also advertisements which appear to be revenue generating
11 for the Defendants as the website owners via "pay by click" advertisements and
12 thereby the images were a draw to those sites and from which Defendants would
13 have obtained revenue.

14 55. Plaintiff is informed and believes that Defendants' conduct constitutes
15 vicarious copyright infringement of Plaintiff's copyrights and exclusive rights in
16 the Photographs in violation of 17 U.S.C. § 106 and 501.

17 56. Plaintiff is informed and believes that Defendants acts of infringement were
18 ongoing, willful, intentional, and purposeful, and/or in reckless disregard of and
19 with indifference to Plaintiff's rights in that Defendants knew or recklessly failed to
20 know that neither they (nor the Third Party Direct Infringers) had the right to use
21 the Photographs in the manner in which they were used. Defendants, to date, have
22 not identified where they obtained the images used on their websites, who was
23 responsible for uploading them, or any licensing information regarding any image
24 used on their websites; and have provided what appears to be false domain
25 registration information to obscure liability warranting a *presumption of*
26 willfulness. 17 USC 504(c)(3)(A).

27 57. As a direct and proximate result of Defendants' infringements, Plaintiff was
28 damaged and is entitled to recover from Defendants the damages, including

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3 attorney's fees, he has sustained and will sustain, and any gains, profits and
4 advantages obtained by Defendants as a result of their acts of infringement alleged
5 above. At present, the amount of damages, gains, profits and advantages cannot be
6 fully ascertained by Plaintiff, but will be established according to proof at trial.
7 Plaintiff also seeks to recover statutory damages for Defendants' infringement of
8 his copyrights of up to \$150,000.00 per infringement.

9 58. Plaintiff is entitled to a preliminary and permanent injunction restraining
10 Defendants from engaging in further acts of copyright infringement and causing
11 irreparable damage to Plaintiff for which he has no adequate remedy of law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants and each of
14 them as follows:

- 15 1. For Plaintiff's actual damages.
- 16 2. For a full accounting under supervision of this Court of all profits,
17 income, receipts, or other benefits derived by Defendants as a result of their willful
18 and unlawful conduct.
- 19 3. For maximum statutory damages under Section 17 U.S.C. § 504(c) of
20 the Copyright Act in the amount of \$150,000.00 for each infringement;
- 21 4. For prejudgment interest.
- 22 5. For attorneys' fees and costs.
- 23 6. For preliminary and permanent injunctive relief from ongoing
24 infringing activities, including, but not limited to:
25 a. enjoining Defendants, and all persons acting in concert or
26 participation with them, from: directly or indirectly infringing in
27 any manner, or causing, contributing to, enabling, facilitating, or
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participating in the infringement, of Plaintiff's copyrights (whether now in existence or hereafter created) or exclusive rights under copyright, and;

- b. the seizure of all property made in, or used to assist in the, violation of Plaintiff's exclusive copyrights pursuant to 17 U.S.C. §503, including, but not limited to, all copies of the Photographs, all domains, Internet Protocol (IP) addresses, and all servers and other computer equipment used to publish, broadcast or archive the Photographs.

7. For such other and further relief as this Court deems just and appropriate.

Dated: January 22, 2016

WOOLF GAFNI & CIRLIN LLP

By: /s/ Adam I. Gafni

Adam I. Gafni
Attorney For Plaintiff
VINCENT K. TYLOR

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any and all issues triable with right by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 22, 2016

WOOLF GAFNI & CIRLIN LLP

By: /s/ Adam I. Gafni

Adam I. Gafni
Attorneys For Plaintiff
VINCENT K. TYLOR